



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

October 25, 2002 Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Felipe Tanseco Juan, M.D.
1652 Rt. 565
Sussex, New York 07461

Felipe Tanseco Juan, M.D.
456 E. 18th Street
Paterson, New Jersey 07514

Paul Robert Maher, Esq.
Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180

RE: In the Matter of Felipe Tanseco Juan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-331) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
FELIPE TANSECO JUAN, M.D.

DETERMINATION
AND
ORDER

BPMC NO. 02-331

A Notice of Referral Proceeding and Statement of Charges, both dated August 2, 2002, were served upon the Respondent, **FELIPE TANSECO JUAN, M.D.** **FRANK E. IAQUINTA, M.D.**, Chairperson, **WILLIAM K. MAJOR, M.D.** and **MS. DONNA MICKLEY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 16, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The **RESPONDENT** appeared pro se.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3), (5), (25) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Felipe Tanseco Juan, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **FELIPE TANSECO JUAN, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 22, 1973, by the issuance of license number 115611 by the New York State Education Department (Ex. 4).
2. On October 12, 2001, Respondent and the State of New Jersey Board of Medical Examiners ("the New Jersey Board") entered into a Consent Order wherein Respondent was reprimanded for the indiscriminate prescribing of controlled substances to patients in his practice of bariatric medicine. In addition to the reprimand, Respondent received a stayed two-year license suspension and two years of probation, and was required to undertake re-education in the field of bariatric medicine totaling at least 50 hours. Furthermore, Respondent was required, as a condition of the staying of his suspension, to successfully complete the certification examination of the American Board of Bariatric Medicine during the period of his probation, or agree to stop practicing bariatric medicine until he does pass, and to have his bariatric medicine charts monitored. Respondent was also required to pay costs and penalties totaling \$20, 942.98 (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the New Jersey Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(3) (negligence on more than one occasion);

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that Respondent, on October 12, 2001, entered into a consent agreement with the New Jersey Board wherein he agreed to accept discipline by the Board. Although the New Jersey Board concluded that Respondent needed retraining in bariatric medicine, and although various "concerns" regarding Respondent's practice were raised, based upon findings in undercover investigations, the only specific finding by the Board was that Respondent had engaged in the indiscriminate prescribing of controlled

substances, in violation of New Jersey law. By causing this Order to be entered by the New Jersey Board, Respondent has committed misconduct in New York State pursuant to Education Law Sections 6530(9)(b) and (d), because the conduct, indiscriminate prescribing of controlled substances, would have constituted misconduct in New York, had it been committed here, under subdivision (3) of the same statute (practicing the profession with negligence on more than one occasion).¹

Inasmuch as the New Jersey Order provides evidence of misconduct in New York, the only issue remaining to be decided is the appropriate penalty to be imposed by the New York Board. Unfortunately, the only evidence bearing on the issue of penalty was the content of the New Jersey Order itself and Respondent's testimony, and the Hearing Committee was not particularly impressed with Respondent's testimony. Essentially, Respondent attempted to blame his problems with the New Jersey Board on his having followed bad drug labeling, dispensing and recordkeeping procedures he inherited from the physician whose bariatric medicine practice he took over. Although Respondent claimed to have rectified these problems, his testimony did not address the actual finding of the New Jersey Board, that he had engaged in the indiscriminate prescribing of controlled substances.

This failure left the Hearing Committee with less than full confidence regarding Respondent's future prescribing practices, should he be allowed to practice in New York. In addition, the primary focus of the New Jersey Order, insofar as it concerned Respondent's future practice of medicine, was with his ability to safely practice bariatric

¹ It is noted that, although expressing concerns regarding these issues, the New Jersey Board made no specific findings of incompetence, improper delegation of responsibilities to unqualified persons, or of inadequate recordkeeping. Therefore, the allegations in the Department's charges that Respondent's conduct would have constituted misconduct in New York under subdivisions (5), (25) and (32) of Education Law Section 6530 cannot be upheld.

medicine, as evidenced by the retraining requirement and the requirement that he pass the Board examination before continuing that practice. Respondent testified that he failed the Board examination he was required to take in October, 2001, and the Hearing Committee did not have a high degree of confidence in Respondent's explanation for that failure – that he did not complete the exam because he thought he had much more time than he did to finish, due to his failure to reset his watch after a long plane flight through other time zones.

The Hearing Committee is of the opinion that a suspension of Respondent's license for two years, the same length of time established by the New Jersey Board, is called for in this case. However, the Hearing Committee is not inclined to stay the suspension under the same conditions the New Jersey Board did, because the New York State Board is not in the same position the New Jersey Board is to monitor Respondent's practice of medicine. In addition, the New Jersey Order specified that the stay of the suspension of Respondent's New Jersey medical license would be lifted if he did not pass the certification examination in October 2001, unless he agreed not to practice bariatric medicine until he passed. Since Respondent has not passed the certification examination yet, he is not practicing bariatric medicine at this time, and the practice monitoring provision in the order has not, therefore, gone into effect. Respondent also testified that his practice of medicine has been almost entirely bariatric medicine, and he apparently has little practice of general medicine.

The Hearing Committee concludes that the two-year suspension called for in this decision should not be stayed unless and until Respondent can verify that he has been cleared by the New Jersey Board to practice in that state without any restrictions, including the prohibition against practicing bariatric medicine. In light of the extremely limited amount of evidence in this record from which it could be concluded that Respondent could be

expected to practice safely and within the law in this state, were he allowed to do so, the Hearing Committee feels that this is the minimum penalty that will adequately protect its residents.

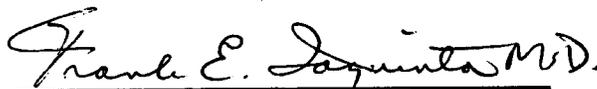
ORDER

IT IS HEREBY ORDERED THAT:

The New York medical license of **FELIPE TANSECO JUAN, M.D.** is **SUSPENDED** for a period of **TWO (2) YEARS**. Any remaining portion of this suspension will be **STAYED** upon verification provided to this Board that he has been restored to the unrestricted practice of medicine by the New Jersey Board. This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: LAKE SUCCESS, NEW YORK
October 22, 2002


FRANK E. IAQUINTA, M.D.
Chairperson

WILLIAM K. MAJOR, M.D.
MS. DONNA MICKLEY

APPENDIX 1

EXHIBIT
10/9/02

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
FELIPE TANSECO JUAN, M.D.
CO-02-01-0185-A

NOTICE OF
REFERRAL
PROCEEDING

TO: FELIPE TANSECO JUAN, M.D.
1652 Rt. 565
Sussex, NY 07461

FELIPE TANSECO JUAN, M.D.
456 E. 18th Street
Paterson, NJ 07514

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of September 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 9, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 9, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
August 2, 2002

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
FELIPE TANSECO JUAN, M.D.
CO-02-01-0185-A

STATEMENT
OF
CHARGES

FELIPE TANSECO JUAN, M.D., the Respondent, was authorized to practice medicine in New York state on January 22, 1973, by the issuance of license number 115611 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 12, 2001, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Consent Order (hereinafter "New Jersey Order"), reprimanded Respondent, suspended his license to practice medicine for two (2) years, the suspension stayed and to be served as probation, required him to successfully complete a minimum of 50 hours of CME in bariatric medicine and the Board certification examination in bariatric medicine, and to pay a \$7,500.00 civil penalty and \$13,422.98 investigative costs, based on indiscriminate prescribing of controlled substances.

B. The conduct resulting in the New Jersey Board disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(5) (incompetence on more than one occasion);
3. New York Education Law §6530(25) (delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified to perform them); and/or

4. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *August 2*, 2002
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct